

Submission
No 146

**INQUIRY INTO REGULATION OF BUILDING
STANDARDS, BUILDING QUALITY AND BUILDING
DISPUTES**

Name: Name suppressed
Date Received: 4 August 2019

Partially
Confidential

Non-complaint gutters on our new home, Certifiers disinterest in protecting building standards and the consumer and inadequate consumer protections for owners ... of new buildings.

Background:

After losing our family home to fire we chose to rebuild with a prominent building company. With the good reputation and the quality of finish in the display homes we believed we would get a quality build that complied with Australian Standards. We were wrong.

We have encountered extensive problems throughout our build. While some issues were repaired after we sought legal representation and with extensive negotiation, most of our concerns were met with dismissive actions by the builder.

The builder's standard response throughout the build when any concern arose was to change our site co-ordinator. With the standard response for the new co-ordinators each time being, it was a problem before they took control of the site and didn't involve them. Referring us to the operations manager.

Major issues include:

1. Damage to existing fencing.

We were left with the significant cost of replacing fencing damaged by the builder.

2. Plumbing incorrectly installed using cable ties and duct tape.

Plumbing fastening were eventually fitted by punching holes in the already plastered wall, despite our request to have this corrected before plastering, and only after we were able to obtain a written statement from the manufacturer of the pipes stating the installation voided product warranty.

3. Inadequate fixing of drainage pipes.

Fixing of drain pipes were dismissed by the builder.

4. Brickwork on windowsills incorrectly angled resulting in rainwater flowing back against the window.

The brickwork was corrected along with smaller issues' in the interior of the home.

5. Dangerous electrical work.

After moving into our home we had our own Electrician attend to install light fittings and connect our pool pump. Upon attending the home he found a dangerous electrical fault.

The electrical meter box had been overloaded with the wiring and as a result the grounding wire had burned, melting the connecting within the meter box and leaving us with a house that was not grounded and therefore potentially live.

Unable to contact the builder with their emergency contact an answering machine, the electrician repaired the fault as he had a duty of care not to leave us in a home that was potentially live.

The builder was notified; their only reply was an email asking what number we had called. They have made no attempt to have this looked at.

The negligent work done by the builder, along with the certifiers failure to check the work put our lives at risk due to the real potential of a house fire or electrocution.

6. Non-complaint gutters and roof overhang

Issue:

The issue of the non-compliant gutter installation with inadequate overflow provision was first identified and brought to the attention of our site supervisor at our first walk through inspection and submitted in writing to the builder on January 11, 2017.

This is not a new issue within the building industry. In fact it is evident that professionals, and FTA have known of this problem for some time. There are multiple reports both professional and in the media over the past 10 years identifying the problems with high front guttering. Examples include:

Media

<https://www.smh.com.au/national/warnings-ignored-on-high-gutter-menace-20090202-gdtbzy.html>

“As much as 85 per cent of new guttering installed on NSW homes is high-fronted, attached to a building's fascia by a spring-clip system. This makes the entire guttering system non-compliant with building codes and Australian Standards because provision for continuous overflow does not exist.”

<https://www.smh.com.au/national/nsw/complaints-pour-in-over-shonky-gutters-20100917-15gbz.html>

<https://www.smh.com.au/national/nsw/hidden-report-confirms-gutter-debacle-20110725-1hx55.html>

“The vast majority of guttering systems commonly used do not meet Australian Standards, and the report - commissioned by the former Fair Trading Minister...but never published - makes more than a dozen recommendations to reform an industry that is "muddled", under-trained and non-compliant...an expert inspection of display homes across NSW...only one of the 35 houses inspected was compliant with the Australian Standard. The report noted that in some of these relatively new display homes, signs of water damage to eaves linings were already apparent,”

Published NRMA:SES data shows the extent of damage caused by non compliantly installed high fronted gutters overflowing into homes in heavy rain events. See SMH link: below:

<https://www.smh.com.au/national/nsw/nsw-residents-poorly-prepared-for-looming-storm-season-nrma-20181011-p5094m.html>

“Leaking and collapsed roofs are some of the most common forms of storm damage seen in NSW, so clearing leaves, moss and other debris from gutters is one thing the SES is urging homeowners to do...”

The building code does not require residents to keep their gutters clean to avoid water ingress - where as the building code does **require** gutters be installed in a way that even if all of the downpipes are blocked storm water can not enter the building in an up to and including 100 ARI – ie rainfall event for that area.

As shown by the above figures self certification has failed homeowners and residents. Mandatory Building Inspection of gutter installation is needed to stop the ongoing problem of mould, material degradation and excessive insurance impacts.

Professional

Patents submitted to the NSW Civil and Administrative Tribunal by a leading industry manufacturer in 2010 and again in 2017 states:

A relevant quote from the 2010 patent:

“As the clip holds the gutter rear wall closely against the front face of the front panel of the fascia board, overflow is likely to pass above and behind the fascia board, into the cavity wall, given the absence of any significant gap between the gutter and the fascia board.”

A relevant quote from the 2017 patent:

“where the front wall of the guttering is higher than the rear wall of the guttering (often referred to as "high front guttering") and where the guttering is fixed hard against the fascia, water can overflow the rear wall of the guttering and enter the roof cavity between the roof surface and the top of the fascia...which is not desirable as it can cause damage to the building...Some high front guttering installations may not allow for rainwater overflow to go anywhere other than over the top of the fascia and into the roof cavity...there is a need for an effective means for allowing rainwater overflow in new rainwater guttering installations to be channelled somewhere other than over the fascia board and into the roof cavity.”

We were also able to obtain a letter by the manufacturer stating the manufacturer “have conducted independent testing through University... on slotted Hi Front Quad gutter with a hook back, fitted to...fascia using our snap clips...The results showed that water will first flow through the slots at lower rainfall intensities, and then flow through both the slots and between the back of the gutter and fascia at higher intensities.” With gutters fitted against the fascia the only place for the water to go is into the fascia, roof cavity and into the wall cavity. Potentially damaging the building and resulting in significant health risk over time due to mould.

Steps we have taken to have our gutter installation rectified:

The Builder.

As mentioned above we first made our concerns known to the builder January 2017. After providing the builder with supporting documentation including building standards. We received emails from tradesmen employed by the builder dismissing us.

After many phone calls and advice from Fair Trading we sought legal advice and our first dispute resolution meeting February 17, 2017. The builder actively

attempted to discourage us from seeking legal advice to the point that were advised in writing that it was “grossly inappropriate” for us to request our legal support attend the dispute meeting with us.

At the builders request we agreed to a 30-day extension period on the build forgoing liquidated damages for this period to allow the builder time to correct the build. As the extension period progressed our gutters remained non-compliant, the builder continually dismissed us, we again sought legal advice and a 2nd resolution meeting.

In the days leading up to this meeting we noticed tradesmen working on our gutters. As we had no access to our site and no communication from the builder we were unaware at this time the builder had installed 4 inverted channels one on each side of the home. This was done without our knowledge or consent. Whilst every other change to our build required us to sign a variation in contract, including changes as small as moving a power point a short distance. However something as significant as modifying our gutters, after we had agreed 3 times in writing on an approved solution was deemed by the builder not to require any communication. Despite attending the second dispute meeting after the installation of the inverted nozzles we were not informed of the change by the builder. We only became aware of this at the final handover inspection.

The 2nd dispute meeting on September 5, 2017 resulted in OM informing us the rectification of the gutters was conditional, in that we had to agree to waive liability for the roof sheeting being short as a result of the 10mm gap. Essentially, in order to have our gutters installed compliantly, we had to except that our roofing will be installed non-compliantly and accept the cost of replacing the roof.

We received an email from the builders legal representative August 8, 2017 stating gutters would not be re-installed with 10mm gap due to non-compliant roof. Incorrectly quoting the Australian Standards for roof overhang into the gutter as 30mm-50mm. Also stating that an independent expert has confirmed compliance, a report that despite requesting on two separate occasions we have not received. However at a recent Fair Trading meeting the OM when asked about independent inspection stated 2 names he believed had preformed the “independent” inspection. Both these men were site supervisors on our home employed by the builder and therefore definitely not independent. We are still waiting to see this report. Fair Trading Australia (FTA) tolerance guides 2007 and 2017 along with the manufactures recommendations state a minimum of 50mm overhang. As a result we are now our home not only has non-compliant gutters but may also have a non-compliant roof with or without the 10mm spacing.

The builder took 33 weeks and 6 days from us first giving them our concerns in writing, many months of correspondence, 2 dispute meetings in which they agreed to rectify our home to then notify us they would not. This is an unreasonable amount of time and shows their contempt and dismissiveness of our concerns we have encountered throughout our build.

We relied on, and paid for, the builder to construct our new home in a tradesman-like manner, in accordance with the Building Code of Australia, this has not happened.

The Certifier, Our Local City Council.

Uncertain of where to get assistance and advice we requested a meeting with our Certifier and Management (employed with our local council) to request a rectification order to have the gutter on our home re-installed with the appropriate overflow measure, such as a 10mm back space.

While we had the meeting Friday August 25, 2017 our request was ignored without valid reason. Instead Management continually referred to a previous case some year's prior stating that he did not have to do anything then and did not have to do anything now. Further suggesting if we were unhappy with the certification we should make a claim to Council's insurance for damages.

During this meeting we were advised by the management that due to time constraints it was not possible for the certifier to check everything that was on their list to check and they relied on the professional tradesmen's signed certificates to deem a build complaint. The ramification of this was not evident to us until we had our safety and lives put at risk with the above-mentioned electrical fault.

We have since learned that it is not appropriate for the builder to arrange the certifier however we were not given that option to arrange our own private certifier.

Insufficient consumer protection from Fair Trading Australia (FTA).

After many phone calls to FTA, uncertain of where to turn we approached our local government politician. Our case was submitted to FTA.

On May 17, 2019 we received a phone call from the area FTA inspector. At which time we were advised amongst other disturbing points, that while we can nominate a person to speak on our behalf we could not have a legal representation or a professional attend our site inspection meeting to offer us advice without signing away our rights to make a decision on any outcome. This was confirmed May 20, 2019, in an email from the FTA inspector with the attached form to do so. Homeowners are expected to participate these meetings with industry professionals without any professional support or advice.

May 22, 2019 we received a further email stating FTA would not be doing a site meeting and our case was closed. After requesting an explanation as to why we were being denied the due process of the site meeting. We received an email, May 27, 2019 stating it was a result of not accepting the one date FTA decided on and instead requested another date for the inspection due to health reasons. We finally received our site meeting July 9, 2019.

The builders OM attended the site meeting, along with another professional from the builders company and the FTA inspector. We also had a friend with no industry experience or professional qualifications simply for support, as we were anxious and very intimidated by both the OM and the FTA inspector as a direct result of previous communication. During the meeting all our concerns or questions were dismissed by the FTA inspector. The inspection itself involved the FTA looking at the roof overhang through the 4 inverted nozzles at total or 400mm of the total gutter area on our home and declared the roof overhang complaint.

Further July 9, 2019, we received an email containing a FTA complaint inspection report stating, "No defective or incomplete items were detected at the time of mediation that can be attributed to the Trader. Confirmation letter is to be issued". Receiving a email later that day, from FTA stating "...I will be shortly issuing a written outcome to the inspection, but that outcome is subject to receipt of certification from the guttering manufacturer that the slots installed in the high fronted eaves guttering on site, comply with the overflow capacity requirements as described in table 3.5.2.4 of the BCA... Despite being advised by FTA we would receive a copy of this confirmation letter we have not received this.

Instead July 26, 2019 we received another call from FTA requesting we make a decision on the spot to agree to the builder modifying the gutter to have the 10mm gap installed. Only after we refused to make a decision without receiving the offer in writing to enable us to get a professional opinion, as well as made a call to FTA to inquire how to submit a formal complaint about the inspector's actions. We received the written offer. Further we were advised that FTA would contact us with details of were to submit our complaint, it is now August 4, 2019 and we are still waiting for this.

The offer from the builder is the same as we had received and agreed to previously on 3 separate occasions during our build, which the builder had reneged on. We do not understand why the FTA inspector is reluctant to issue a directive to rectify our gutters and ensure the correct roof overhang in accordance with the Building Code of Australia, AS 3500.3, the roof sheet and gutter manufacturer's written recommendations as well as the FTA guides and tolerances, despite the builder failing to produce the agreed compliance letter from the gutter manufacturer.

As consumers we believed FTA's role was not only to ensure the builder received the agreed payment for work done. But also to ensure the homeowner received a product (home) that meet the Building Codes and Standards of Australia. We have paid the builder in full as required, however we have not received the product we paid for.

FTA does not support the homeowner and in fact do everything in their power to discourage the homeowner from perusing their right to have a home that complies with the Building Codes. We are currently still in the process of the FTA complaint with more ore detail to follow.

As consumers:

We relied on, and paid for, the builder to construct our new home in a tradesman-like manner, in accordance with the Building Code of Australia.

This has not happened.

We relied on and paid the certifier to ensure that our home was constructed in accordance with the relevant Building Codes of Australia.

This has not happened.

We rely on FTA to enforce the Building Codes and Standards of Australia ensuring as consumers we a complaint home.

This is not happening.

Substandard gutter installation results in water damage to homes and significant health risks to homeowners. Creating both a legal and insurance nightmare for homeowners, builders, certifiers and FTA.

It is the responsibility of the professional (builders and certifiers) to ensure that building works meet the relevant BCA and standards, and it is the responsibility of fair trading to ensure this is done.

There needs to be:

- Enforcement of the Building Codes by the governing body.
- Consistency within the relevant Australian Building Codes and Standards.
- Mandatory building inspection by certifiers not employed by the builders.
- Mandatory proof of understanding of the building codes and standards by the builders and their licenced professionals.

With:

- Ongoing monitoring by the relevant authority (FTA) as part of their ongoing licencing.

Why is this not happening?